

GALLATIN COUNTY LEGISLATIVE LIAISON

1/23/2007

Testimony on SB 110

Madam Chair & Distinguished Senators,

On behalf of Gallatin County I want to thank you for the opportunity to address several important issues regarding SB 110. The Gallatin County Commission has carefully reviewed the changes made by this legislation and commends the work of the Interim Committee and the Consensus Group for all of the hard work put into this legislation.

It is the position of Gallatin County that the provisions of SB 110 are important and we support their passage. However in reviewing SB 110 Gallatin County strongly feels that a couple of issues should be addressed as this legislation moves forward.

1. Condo Amendment

Section 4 of SB 110 adds a provision to the Unit Ownership Act requiring condominium declarations to contain "an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under Title 76, chapter 3, or have been subjected to review under Title 76, chapter 3." At this time, SB 110 does not contain a companion provision amending the Subdivision and Platting Act to authorize local governments to review the condominium proposals and issue certificates if exempt.

In addition, the Subdivision and Platting Act does not currently authorize local governments to adopt regulations creating procedures and criteria for determining whether a condominium proposal is exempt from subdivision review.

To correct this we have asked the sponsor and the consensus group to include the following language providing clear authority to review condominium proposals as well as authorize local governments to create specific regulations that will allow developers of condominiums to know exactly what conditions must exist for their proposal to be exempt from review.

Addition to § 76-3-203(3): The governing body shall examine a condominium proposal submitted under Title 70, chapter 23, to determine whether or not the condominium proposal is exempt from review under parts 5 and 6 of this chapter, and if exempt, shall issue a certification of exemption to be filed with the condominium declaration.

Addition to § 76-3-504(1): The subdivision regulations adopted under this chapter must, at a minimum: establish procedures and criteria that the

governing body or reviewing authority will use to determine whether a condominium declaration submitted pursuant to Title 70, chapter 23, complies with the requirements of chapter.

During 2006, 35 condominium declarations were filed for condominiums within the unincorporated portions of Gallatin County creating 278 condominium units. At this time, there is no authority for a Clerk and Recorder to refuse to file a condominium declaration. Thus, there is no way to determine whether these 278 units were exempt from subdivision review.

Please note the above language does not include a provision authorizing local governments to charge review fees as several members of the SJ 11 group were more inclined to support the proposal if it did not contain specific fee language.

2. Zoning Protest Period

It is the position of Gallatin County that the protest period for the creation of a 201 zoning district or the amendment of a 201 zoning district should be extended to 90 days.

It is our experience that many landowners delay participation until the very end of a process due to time of year, business schedules, construction seasons, seeding, harvest, and various other reasons. Because the adoption of a 201 Zoning District or a change in a 201 Zoning Regulation has a potentially permanent impact to landowners, giving the landowners who will have to live under this regulation and extra 60 days to ensure they fully understand and have opportunity to address the regulation will only make the process more trusting.

Gallatin County did present this provision to the consensus group, however a decision on consensus was not reached prior to this hearing. Additionally, Gallatin County had begun drafting legislation through Representative Sinrud and Senator Perry to correct this before we saw the final draft of SB 110. We would prefer to resolve it through an amendment in this bill rather than carry it through stand alone legislation, but we do understand and respect the consensus process.

3. Legal Challenge to a Zoning District Creation

Section 15. of the bill amends 76-2-202 (1)(b) from 5 years to 30 days for an action challenging the creation of a zoning district. Gallatin County believes that the period of time for the legal challenge of the creation of a zoning district should be shortened to 1 year from 5. We agreed that 5 years is too long, but under the current bill draft only having 30 days to protest and then only having 30 days to mount a legal challenge as to the validity of the zoning process seems an overwhelming timeframe.

Zoning is a decision that has a significant impact on individual property owners. Landowners subject to new zoning or zoning changes are faced with living with it for

years of maybe even a lifetime. Changes in zoning designation or zoning regulations can be costly and difficult for a landowner to achieve.

If the local government is confident that the provisions they are enacting through zoning are for the good of the community then allowing sufficient time to ensure all everything was done right should be simple due diligence.

These issues may also be better addressed in a separate bill, however we would welcome the opportunity to resolve them through SB 110.

4. Zoning Flexibility and Implementation

Our biggest issue that we would like to see this legislation address is not due to a legislative change that is proposed in this bill, but because of a lack of a change that should be in this bill.

Under SB 110 the county may create a 201 zoning district with relatively limited boundaries and rules as provided for in *Section 15* and *Section 16* of the bill. Those boundaries and rules can be changed through the process offered under Montana Law in 76-2-205, MCA that is outlined in *Section 17* of this bill.

While the changes in *Section 15* & *16* of the bill add flexibility to zoning implementation, *Section 17* doesn't give flexibility to change the provisions of zoning once it is in place.

Consider this, Gallatin County may decide to create a 201 zoning district from the Gallatin River west to the county line of 1 house per 80 acres for density only, no rules or regulations for land use permits, structure types, setbacks etc.

Now, lets say that one year later the (unincorporated) community of Amsterdam decides that they want to create their own zoning district to promote proper growth in their community. The new zoning district identifies specific uses, commercial, residential, industrial, strip clubs, bars, gas stations, liquor stores, setbacks, building heights, etc.

What are their options? They can't create a 101 Citizen Initiated zoning district over the top of a 201 zoning district. They can't put a new 201 zoning district over the top of a existing 201 district. They can't simply adjust remove the 201 zoning designation from the area and start over.

Under 76-2-205 they can amend the boundaries and the regulations to implement what would be considered an "Overlay District". Difficulty here is that the entire district would protest any changes that would occur within the Overlay District. We want to ensure that only those property owners within the geographic boundary of the Overlay District get to vote on any zone amendments or changes within their Overlay District.

In closing we sincerely hope that these issues can be addressed through SB 110. We believe that it will make a good bill even better. Again, thank you for your assistance in this important matter.

Sincerely

Michael Harris
Gallatin County Legislative Liaison